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September 4, 2013

Joseph Anthony Ureneck  
2 Marlowe Street  
Dorchester, MA 02124

Re: Initiative Petition No. 13-19: Law Relative to Abuse Prevention

Dear Mr. Ureneck:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, we have reviewed the above-referenced initiative petition, which was submitted to the Attorney General on or before the first Wednesday of August of this year.

I regret that we are unable to certify that this measure complies with the requirements of Article 48, the Initiative, Part 2, Sections 2 and 3. Section 2 states in pertinent part that "No measure that relates . . . to the powers . . . of courts . . . shall be proposed by an initiative petition." As explained below, Petition No. 13-19 relates to the powers of courts, and thus the petition cannot be certified. Also, we are unable to certify that the proposal is in "proper form for submission to the people," as required by Article 48, the Initiative, Part 2, Section 3. Our decision, as with all decisions on certification of initiative petitions, is based solely on art. 48's legal standards; it does not reflect any policy views the Attorney General may have on the merits of the proposed law.

The proposed law's substantive provision would require (with emphasis added) that "civil complaints concerning abuse prevention, current laws notwithstanding, shall provide for all due process rights available under the Massachusetts civil laws including the right to trial by jury." The main purpose of the petition relates to the powers of courts in cases involving restraining orders under G.L. c. 209A ("Abuse Prevention") and G.L. c. 258E ("Harassment Prevention Orders," also covering abuse). Thus the petition is excluded from the initiative process. See Mazzone v. Attorney General, 432 Mass. 515, 519-22 (2000) (explaining that "powers of courts" exclusion focuses on "main purpose" or "main design" of proposed law).

As its proponent explained, the "powers of courts" exclusion was aimed in part at preventing "initiative petitions which will agitate up and down the State [regarding] matters of injunctions and that sort of proposition." 2 Debates in the Massachusetts Constitutional Convention 1917-1918, 991 (1918) (remarks of Mr. Dutch) (emphasis added); see id. at 791-97



(indicating Mr. Dutch's sponsorship of "powers of courts" exclusion). That is, the initiative petition process was not to be used as a vehicle for popular debate over, and the enactment of laws restricting (or expanding) the powers of courts. Certifying Petition No. 13-19 would lead to exactly that result.

In Albano v. Attorney General, 437 Mass. 156, 159 (2002), the court said:

Previously, when we have held that a referendum "relates to ... the powers ... of courts," the measure at issue dealt exclusively and explicitly with the power to decide cases or enforce decisions. Custody of a Minor (No. 1), 391 Mass. 572, 578 (1984) (statute authorizing consolidation of related custody and adoption actions brought initially in different trial courts). Kagan v. United Vacuum Appliance Corp., 357 Mass. 680, 682 (1970) (measure establishing court's long-arm jurisdiction). These provisions did not simply change the substantive law enforced by the courts; they altered the courts' basic ability to render decisions in an entire category of cases, thus imposing the type of impact on courts' powers that art. 48 envisioned. By contrast, when an initiative petition only alters the substantive law enforced by the courts, the work of the courts is affected in an incidental way; it cannot be said that the "main feature" of that petition is to alter the power of the courts. Commonwealth v. Yee, 361 Mass. 533, 537 (1972), quoting Horton v. Attorney Gen., [269 Mass. 503], 511 [(1930)] ("A general law covering a subject disconnected with courts in its main feature does not come within the prohibition of . . . art. 48 . . . because, in an incidental and subsidiary way, the work of the courts may be increased or diminished or changed"). See Mazzone v. Attorney Gen., *supra* at 522, (petition expanding category of defendants who may request diversion into drug treatment programs not within exclusion); Horton v. Attorney Gen., *supra* at 511-512 (initiative petition creating automobile insurance fund and repealing judicial review of automobile security rates not within exclusion).

Petition No. 13-19's proposed law, by requiring abuse prevention proceedings to incorporate an unspecified range of "due process rights available under the Massachusetts civil laws," as well as "the right to trial by jury," would "alter[] the courts' basic ability to render decisions in an entire category of cases, thus imposing the type of impact on courts' powers that art. 48 envisioned." Albano, 437 Mass. at 159. The proposed law "refer[s] directly to the powers of the court," and its effect on court powers is not merely "incidental." Yee, 361 Mass. 533 at 538. Nor is the scope of the powers-of-courts exclusion limited to measures that affect courts' "administrative powers." See, e.g., Kagan, 357 Mass. at 682 (1970) (law establishing court's long-arm jurisdiction related to powers of courts); Commonwealth v. Sacco, 255 Mass. 369, 410 (1926) (law empowering Superior Court to grant new trials at any time before sentencing was law relating to powers of courts).

In addition, the law proposed by Petition No.13-19 is not in "proper form for submission to the people," as required by art. 48, because its wording is so vague and self-contradictory that we cannot determine, or inform potential voters, what it means. The proposed law states (with emphasis added) that in all "civil complaints concerning abuse prevention, current laws



notwithstanding, shall provide for all due process rights available under the Massachusetts civil laws including the right to trial by jury." This language suggests that, regardless of current law, parties would be entitled to all due process rights available under current law. That language is, at a minimum, quite unclear.

The language could mean "the parties shall have the right to what they have a right to," which would be circular. Or, it could mean that any particular right that could be characterized as a "due process" right, and is currently available in any particular type of civil proceeding in Massachusetts, would now be available in abuse prevention cases. That might include the various rights that are available under G.L. c. 30A and the standard rules of adjudicatory procedure governing administrative proceedings, 801 C.M.R. 1.01, to the extent that identical rights are not available under the Massachusetts Rules of Civil Procedure and any special court rules applicable to cases under G.L. c. 209A and G.L. c. 209C. Or, it could mean only those rights that have been held to be available in any type of civil proceeding as matter of state constitutional procedural due process, regardless of the private interest at issue, would have to be available in abuse prevention proceedings.

We are unable to determine from the language of the proposed amendment, which must be our guide, whether it has any of the above meanings, or has some other, less obvious meaning. Thus we are unable to write the "fair, concise summary" required by art. 48, so that voters will know what they are being asked to support. The unresolvable ambiguity of the proposed law's core language means that it is not in proper form.

For the foregoing reasons, Petition No. 13-19 cannot be certified under art. 48.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Pete Sacks", written in a cursive, flowing style.

Peter Sacks  
State Solicitor  
617-963-2064

cc: William Francis Galvin, Secretary of the Commonwealth